

## **INSTRUCTIONS TO OUT-OF-STATE BEER VENDORS**

This handout provides instructions to out-of-state beer vendors for shipping beer into California. It covers the following subjects:

1. Certificate of Compliance (required of all out-of-state vendors shipping beer into California)
2. Out-of-State Beer Manufacturer's Certificate (required by breweries in the United States who do not also manufacture beer in California)
3. Filing of Malt Beverage Price Schedules
4. Labeling Requirements (for beer shipped into California)
5. Manner of Consignment
6. Filing of Names (for draught beer and bottled and canned malt beverages)
7. Label Approval Prior to Shipment
8. Wholesaler Territorial Limits
9. Alcoholic Beverage Control Act Available for Purchase
10. California Beverage Container Recycling and Litter Reduction Act

### **1. Certificate of Compliance**

A Certificate of Compliance is required of all out-of-state vendors shipping beer into California. Section 23671 reads as follows:

No beer importer shall purchase any beer not manufactured within the state or cause any beer to be transported into the state for sale in the state, unless the out-of-state vendor making shipment of the beer into the state holds a certificate of compliance issued by the department. A certificate of compliance shall be granted when the out-of-state vendor makes a written agreement with the department to furnish to the board, on or before the 10th day of each month, a report on a form prescribed by the board, showing the quantity of beer shipped by the out-of-state vendor to each licensed beer importer in this state during the preceding month. The out-of-state vendor shall further agree that it and its agents and all agencies within this state controlled by it will comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.

If any out-of-state vendor, after obtaining the certificate, fails to submit the report or to comply with Section 14575 of the Public Resources Code, the department may suspend or revoke the certificate of compliance in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state, which the department determines to be convenient to the holder of the certificate.

No fee shall be charged for the certificate of compliance which shall remain in effect until revoked by the department.

("Board," as used above, refers to the California State Board of Equalization.)

**Form ABC-410.** Section 23671 provides that an agreement (Form ABC-410) must be entered into by all out-of-state vendors shipping beer into California and the State of California

through ABC. For purposes of this agreement, "vendor" means the company who appears as consignor (shipper) on the freight bill of lading.

Under the agreement such out-of-state vendors agree to furnish monthly to the State Board of Equalization,<sup>1</sup> information on the quantities of beer shipped by them to California beer importers. Separate report forms are required for packaged beer and draught beer. A report must be filed even though no beer is shipped. The Board of Equalization will furnish you a supply of the report (Form BOE-1056) after the certificate of compliance is issued by this Department.

ABC will issue a numbered certificate of compliance to each out-of-state brewer, wholesaler, United States importer or other vendor who executes an agreement.

The agreement may be signed on either of the following bases where shipments are made from more than one point for the same organization. One of the boxes in Item 7 of the agreement should be checked:

- (a) Where there are several branches of an organization shipping direct to various beer importers in California, an agreement may be executed by each such branch. In such a case each branch would then make the monthly reports direct to the State Board of Equalization.
- (b) Even though there are several branches to a company, one agreement for the entire company may be executed, in which case a consolidated report for all company shipments would be made to the State Board of Equalization monthly. A list of addresses of such branches must be furnished to this Department.

Under Item 9 of the agreement a general agent/attorney-in-fact in California must be designated. This designation is for the *limited* purpose of serving upon the certificate of compliance holder legal notice of any action. The person you select to act as your general agent for service of legal process may be your distributor or another person who is at least 18 years of age and has a permanent place of business or residence in California. *Note: This designation does not confer upon that person the authority to enter into territorial agreements with California wholesalers on behalf of the manufacturer or brand owner unless specific written authorization (power of attorney) is filed with ABC.*

One copy of the agreement form is attached. ***An original and three copies should be completed and forwarded to ABC, 3927 Lennane Drive, Suite 100, Sacramento, California 95834, for each organization that will ship beer to licensed importers in California.*** If you have branches for which you elect under (a) above to execute separate agreements, additional forms will be furnished upon request.

## 2. Out-of-State Beer Manufacturer's Certificate

An Out-of-State Beer Manufacturer's Certificate is required by breweries in the United States who do not also manufacture beer in California

Section 23357.1 provides that an out-of-state beer manufacturer within the United States must hold an out-of-state beer manufacturer's certificate before California importers can bring the

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<sup>1</sup>Board of Equalization  
P.O. Box 942879, MIC 56  
Sacramento, CA 94279-0001

manufacturer's beer into the State. It does not apply to an out-of-state manufacturer who also manufactures beer in California. This certificate is in addition to any certificate(s) of compliance held by the manufacturer. Foreign breweries need not apply for this certificate. The application form (ABC-216) may be obtained from our website at [www.abc.ca.gov](http://www.abc.ca.gov).

Section 23357.1 reads as follows:

An out-of-state beer manufacturer's certificate authorizes the shipment of beer manufactured without this State to licensed importers within this State. Beer manufactured without this State, but not beer manufactured without the United States, may only be obtained by a licensed importer within this State from the holder of an active out-of-state beer manufacturer's certificate. Only one out-of-state beer manufacturer's certificate may be issued to any one beer manufacturer.

A California beer manufacturer with a license in good standing in this State may ship into this State beer which was manufactured at plants out of this State without holding an out-of-state beer manufacturer's certificate.

Section 23357.2 sets forth the conditions for obtaining an out-of-state beer manufacturer's certificate. This section reads as follows:

- (a) An out-of-state beer manufacturer's certificate may be issued by the department upon the written undertaking and agreement by the applicant:
  - (1) That it and its agents and all agencies within this state controlled by it will comply with all laws of this state and all rules of the department with respect to the sale of alcoholic beverages, including, but not limited to, Chapter 12 (commencing with Section 25000) of Division 9, and Section 25509, to the same extent as licensees.
  - (2) That it will make available, both in California and outside the state, for inspection and copying by the department, all books, documents, and records, located both within and without this state, which are pertinent to the activities of the applicant, its agents and agencies within this state controlled by it, in connection with the sale and distribution of its products within this state.
- (b) The department may suspend or revoke an out-of-state beer manufacturer's certificate for cause in the manner provided for the suspension or revocation of licenses, and after a hearing which shall be held in the City of Sacramento or in any other county seat in this state as the department determines to be convenient to the holder of an out-of-state certificate.
- (c) The annual fees for an out-of-state beer manufacturer's certificate shall be determined by the department, and shall approximate the department's cost of investigation of the applicant and of issuance of such certificate.
- (d) All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided by Section 25761.

Rule 132 reads as follows:

- (a) Application. A beer manufacturer in the United States, who does not manufacture beer in California and desires to ship beer into this State, may make an application in person or by mail to the Headquarters Office of the Department in Sacramento for an out-

of-state beer manufacturer's certificate. Only one such certificate will be issued to any one beer manufacturer. The application shall be accompanied by the annual fee, and shall include a written undertaking and agreement by the applicant:

(1) That it and its agents and all agencies within this State controlled by it will comply with all laws of this State and all rules of the Department with respect to the sale of alcoholic beverages.

(2) That it will make available both in California and from outside the State, for inspection and copying by the Department, all books, documents, and records located both within and without this State, which are pertinent to the activities of the applicant, its agents and agencies within this State controlled by it, in connection with the sale and distribution of its products within this State.

(b) Investigation. Upon receipt of an application for an out-of-state beer manufacturer's certificate accompanied by the annual fee, the Department shall make an investigation to determine whether the applicant qualifies for the certificate applied for, or whether issuance would be in conflict with any law of this State or rule of the Department.

(c) Fees. The fee for the out-of-state beer manufacturer's certificate shall be \$60.00 per year or any portion thereof.

(d) Fiscal Year; Renewability. The certificate shall be issued on the basis of a fiscal year, commencing on July 1 and ending on June 30. The certificate may be renewed annually. Renewals must be postmarked on or before June 30 or the certificate will be canceled effective July 1 of the new fiscal year.

(e) Nontransferable. An out-of-state beer manufacturer's certificate shall be nontransferable. The Department shall cancel the certificate of any holder who has ceased doing business as an out-of-state beer manufacturer.

### **3. Filing of Malt Beverage Price Schedules**

Sections 23671 and 23357.2 require that holders of certificates of compliance and/or out-of-state beer manufacturer's certificates must comply with Section 25000, which reads as follows:

Each manufacturer, importer, and wholesaler of beer shall file and thereafter maintain on file with the department, in triplicate and in such form as the department may provide, a written schedule of selling prices charged by the licensee for beer sold and distributed by him to his customers in California, except that the transfer, including the sale of beer between wholesalers who sell the same brand in package is permitted without filing the schedule of selling prices. All prices filed shall be for immediate delivery. Each manufacturer, importer, and wholesaler of beer shall file a price schedule for each county in which his or her customers have their premise, whether the price which is posted is f.o.b. or delivered, or both. Different prices for different trading areas within a county shall be based upon natural geographical differences justifying the different prices, and shall not be established for special customers. This section shall not affect or alter any provisions of law concerning quantity discounts on beer.

Certificate holders should use Form ABC-701, Malt Beverage Price Schedule, to file schedules of selling prices. This form is not routinely furnished to filing licensees. You may copy the

sample form as is or obtain it from our website at [www.abc.ca.gov](http://www.abc.ca.gov). One schedule for each county where you have a customer (distributor) is sufficient.

*Note: Attached ABC-701 is for reference only. Do not complete the form at this time.*

*Headquarters will send additional information concerning price posting procedures after issuance of the certificate of compliance and/or out-of-state beer manufacturer's certificate.*

#### 4. **Labeling requirements**

The California ABC Act has a number of beer labeling requirements for beer sold in the State. Section 25200 reads as follows:

All beer sold in this State shall have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also the true and correct name of the bottler of the beer if other than the manufacturer. No manufacturer, importer, or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon the container or carton, or use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in the container or carton.

Section 25204 concerning alcohol content labeling reads as follows:

- (a) Any beer container sold within this state shall bear a label that conforms with the alcohol content labeling requirements prescribed in Section 7.71 of Part 7 of Title 27 of the Code of Federal Regulations, as adopted pursuant to the Federal Alcohol Administration Act (27 U.S.C. Sec. 201 et seq).
- (b) Any beer container sold within this state that contains more than 5.7 percent alcohol by volume shall include a statement of alcoholic content.
- (c) This section shall become operative on July 1, 1997.

Rule 130 of the California Code of Regulations reads, in part, as follows:

The name and address of any manufacturer or bottler or person appearing upon any label of beer must be the true name and address of such person at the time of packaging of such product. The true name of a manufacturer or bottler or person shall be deemed to include a fictitious business name for which such manufacturer, bottler or person has duly filed a Fictitious Business Name Statement pursuant to the provisions of Section 17900 et seq. of the Business and Professions Code.

Any labels or notices affixed to beer must, if such beer is produced in this State, be affixed prior to the first sale, and in the case of beer produced outside the State and imported into this State, must be affixed prior to delivery in this State.

A copy of any label or notice affixed to beer shall, if that beer is produced in this State, be furnished to the Headquarters Office of the Department by the manufacturer prior to the first sale, and if that beer is produced outside this State and imported into this State, shall be furnished to the Headquarters Office of the Department by the shipper prior to delivery in this State.

See Item 7 for additional information concerning label approval.

Pursuant to a legal opinion, all alcoholic malt beverage labels must show that the product is one of those named above; i.e., beer, ale, porter, brown, stout or malt liquor.

## **5. Manner of Consignment**

Section 23661 deals with the shipping of alcoholic beverages into California. It reads, in part, as follows:

Except as otherwise provided in this section, alcoholic beverages may be brought into this State from without this State for delivery or use within the State only by common carriers and only when the alcoholic beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division.

Section 23661.5 allows a person who manufactures or produces beer outside of California but within the United States, to transport such beer into California in a vehicle owned and operated by him or operated by him pursuant to a lease, the term of which is not less than 30 days, or by contract carrier. Delivery can be only to a licensee who is authorized to import beer. Delivery must be made at the premises of the licensee or to a licensed customs broker at the premises of a properly licensed public warehouse.

The out-of-state beer manufacturer or producer must conform to the laws of the United States and must obtain an interstate alcoholic beverage transporter's permit from the State Board of Equalization<sup>2</sup>.

## **6. Filing of Names for Draught Beer and Bottled and Canned Malt Beverages**

Section 25203 reads as follows:

Every manufacturer or bottler of beer in this State or elsewhere whose beer is sold within the State shall file with the department the brand name or names under which he sells or labels his draught beer sold in the State.

There is a provision of the Beer Shipper's Agreement for furnishing the required information at the time the agreement is signed by you. If you expect to ship draught beer to California, the brand name must be shown. If you do not have draught beer, or do not intend to sell it in California, enter the word "None".

List the brand names of any canned or bottled malt beverages to be shipped into this State.

## **7. Label Approval**

At the time of submitting a Beer Shipper's Agreement, the labels for all brands and sizes of malt beverages, whether bottled, canned or kegged, to be shipped into California must be

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<sup>2</sup>Board of Equalization  
Excise Taxes Division  
P.O. Box 942879, MIC 56  
Sacramento, CA 94279-0001

submitted to determine acceptability. If one or more labels are determined to be unacceptable, revised labels shall be submitted for review prior to issuance of a certificate of compliance. Revisions to previously approved labels must also be submitted to ABC prior to commencing shipments to California.

Form ABC-412, Label Approval Application, shall be used both for the initial approval process and for any subsequent label submissions. The holder of a certificate of compliance and/or an out-of-state beer manufacturer's certificate is responsible for completing this form. You may obtain this form and instructions for completing it from our website at [www.abc.ca.gov](http://www.abc.ca.gov).

If a beer manufacturer uses a trade name as the name of the manufacturer, rather than its true name, on a product label, the manufacturer must file a Fictitious Business Name Statement in the county of his principal place of business in California. Beer manufacturers whose principal place of business is outside California, or in a foreign country, must file the Fictitious Business Name Statement in Sacramento County. Forms and filing information may be obtained directly from the County of Sacramento, Department of Finance, Business License Section, 700 H Street, Room 1710, Sacramento, CA 95814; (916) 874-6644. Forms are also available through the County's Internet web site: <[www.co.sacramento.ca.us](http://www.co.sacramento.ca.us)>. On their homepage look for "Where Can I Find: Tax Collection & Licensing." After filing the Fictitious Business Name Statement, provide one *endorsed* copy of the Statement, with the product label(s), to the Department. It is not necessary to provide us with the "Proof of Publication."

Note: Labels which have been approved by the Alcohol and Tobacco Tax and Trade Bureau (TTB) do not *necessarily* meet California's labeling requirements. For example, foreign beer manufacturers often do not include the city of manufacture on the product label, which is required by state law. *The possession of a federally-approved Certificate of Label Approval (COLA) does not guarantee State label approval.*

Malt beverage labels must also comply with the Recycling Act (see item 10).

Questions concerning label approval procedures should be directed to the Headquarters Business Practices Unit, (916) 419-2500.

## **8. Wholesaler Territorial Limits**

Wholesalers in California must file a schedule of their prices with ABC and sell malt beverages at the prices on file. Section 25000.5 of the ABC Act prohibits the filing of prices by a wholesaler for any brand unless the wholesaler has entered into a contract with the brewer of the brand, setting forth the territorial limits within which the wholesaler may sell that brand. The territorial limits may include the entire State of California if the brewer and wholesaler agree on this. More than one wholesaler may be designated to sell a brand of malt beverages within a territory. A copy of the required contract between the wholesaler and brewer must be filed with the Department by the wholesaler. Section 25000.5 reads as follows:

(a) Every beer manufacturer, whether located within or without the State, who sells and distributes beer in this State shall designate territorial limits in the State within which the brands of beer manufactured by him may be sold by wholesalers of beer to retail licensees.

(b) A wholesaler of beer shall not file a written schedule of selling prices to be charged by that licensee for any brand of beer unless he has first entered into a written agreement,

with the manufacturer of that brand, which sets forth the territorial limits within which the brand shall be distributed by the wholesaler. A copy of such agreement, and any amendments thereto, shall be filed with the department.”

**9. Purchase of Alcoholic Beverage Control Act**

The ABC Act may be purchased at any district office of the Department, or from Department Headquarters, Accounting Unit, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834; (916) 419-2589.

**10. California Beverage Container Recycling and Litter Reduction Act (Recycling Act)**

The Recycling Act is administered and enforced by the Department of Conservation, Division of Recycling and requires that malt beverage containers offered for sale in California have certain information indicating compliance with that Act. To obtain further information concerning message statement requirements contact the Division of Recycling, 801 K Street, MS 15-59, Sacramento, CA 95814-3533 or call (916) 327-7361. Non-compliance with the provisions of the Recycling Act may result in severe civil or criminal penalties.

Label approval given by ABC does *not* consider the requirements of the Recycling Act. You may wish to submit your malt beverage labels to the Division of Recycling to determine whether they also comply with their requirements.

Division of Recycling  
Industry Services  
801 K Street, MS 15-59  
Sacramento, CA 95814-3533